

SUPPORTING AFFIRMATION

I, RODERICK ARRINGTON, being duly sworn, deposes and states:

I am proceeding pro se in this case. This affirmation is submitted in support of defendant's motion for a dismissal with prejudice, because a pattern of Outrageous and egregious prosecutorial misconduct has been committed during the prosecution of this case. Also pursuant to Fed. R. Crim. P. 12(b)(1) defects in the institution of the prosecution.

On April 8, 2020, Hon. Michael J. Roemer, U.S. Magistrate Judge, issued a search warrant (20-MJ-5061). The warrant application and the affidavit was specifically for the investigation involving "EVIDENCE FROM A SEPARATE CASE/ INVESTIGATION", involving a homicide victim by the name of Michael Payne a.k.a Juice, that had no connection to this superseding indictment. In this affidavit for the search warrant, FBI SA Robert Colunga used Fed. R. Crim. P. 41(c), and described those items for which that warrant was based upon "ONLY". The affidavit for the warrant did not state, for the use to compare DNA buccal samples for "ACQUITTED EVIDENCE", in which, Mr.

Arrington was acquitted by a petit Jury (6) Six years ago at Arrington's first trial. Mr. Arrington is no longer a target nor a suspect in that case, those evidence Mr. Arrington is no longer charged with, which makes him a innocent man. Mr. Arrington's DNA buccal samples was not a match for any of those items stated in the affidavit for the warrant, which it was based upon.

The Warrant application was only authorized for the items pursuant to Fed. R. Crim. P. 41 (c), (1) evidence of a crime; (2) contraband, fruits of crime, or other items illegally possessed; (3) property designed for use, intended for use, or used in committing a crime; or (4) a person to be arrested or a person who is unlawfully restrained.

AUSA Tripi, AUSA Lenihan, and AUSA Lipman has violated Mr. Arrington's constitutional rights, and the Substantive Due Process, along with the Fourth Amendment. This is conduct that shocks the conscience: Illegally taking Mr. Arrington's DNA buccal samples from another case/investigation after learning Arrington is no longer the targeted suspect in that investigation. Takes Arrington DNA buccal samples and further compare it with the "Acquitted Evidence", that Arrington was found "NOT Guilty," by a petit Jury (6) Six years ago at his first trial, made Arrington an innocent man for those

evidence. (see DKT.No. 240)

This Outrageous and egregious prosecutorial misconduct to obtain evidence, trying to get a second bite at the apple, is bound to offend even hardened sensibilities. They are Methods too close to the rack and the screw to permit of constitutional differentiation.

AUSA Tripi, AUSA Lenihan, and AUSA Lipman, illegally and intentionally took evidence from another case, misleading this court, which lead to this court to make incorrect decisions in the following motions (DKT.Nos. 596, 671, 705). citing *Boyd V. U.S.*, 116 US 616, THE Supreme Court of the U.S., reversed and remanded the Judgment of the lower Court, with directions to award a new trial. In the customs case for forfeiture where appellant importer was compelled to give incriminating evidence against himself. Appellee federal government had seized cases of appellant's plate glass, pursuant to the Act of June 22, 1874, 18 Stat. 186 §12 (1874). At trial, appellant was compelled under §5 of the Act to produce the incriminating invoice. Appellant produced the invoice, but objected to its validity and constitutionality because in a forfeiture suit, no evidence could be compelled from the claimants themselves. The Court agreed with appellant, and held that

the Act was unconstitutional and void, as it violated the Fifth Amendment. The Court held that a forfeiture action was an in rem action that was criminal in nature, and accordingly, appellant was entitled to protection under the Fourth and Fifth Amendments. Also citing *Rochin V. California*, 342 US 165, The Court reversed defendant's conviction for possession of Morphine, because police officers entered his home without a warrant, tackled him to the ground, and then made a doctor pump his stomach against his will. Here in Mr. Arrington's case, FBI SA Colunga came to (C.C.J) Cattaraugus County Jail with the Search and Seizure Warrant for Arrington's DNA buccal samples. Arrington denied it and asked for time to talk to appointed Counsel Joseph LaTona, who told Arrington, that AUSA Tripi said that the DNA buccal samples was not for this Superseding indictment, its for another investigation, which was later found out to be the Payne investigation. (see the Warrant and DNA reports as an exhibit to support this motion to dismiss).

THE AUSA Lenihan and AUSA Lipman intentionally omitted falsified DNA reports as "New Evidence" and Brady discovery evidence into the prosecution of this case during oral arguments on October 12, 2021, (DKT.No.651), and made intentional misleading statements and omissions to this Court.

Of particular relevance here, the inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the Court, citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944); *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575, 580 (1946). This "Historic power of equity to set aside fraudulently begotten Judgments," *Hazel-Atlas*, 322 U.S. at 245, is necessary to the integrity of the Courts, for "tampering with the administration of Justice in this manner involves far more than an injury to a single pro se litigant. It is a wrong against the institutions set up to protect and safeguard the public." Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. *Universal Oil*, supra, at 580.

The inherent power of the district Court includes the power to police the conduct of attorneys as officers of the Court, and to sanction attorneys for conduct not inherent to client representation, such as, violations of court orders or other conduct which interferes with the court's power to manage its calendar and the courtroom without a finding of bad faith. Under circumstances involving a lawyer's negligent or reckless failure to perform his or her responsibility as an officer of the Court, sanctions may be justified absent a finding of bad faith given the Court's inherent power to manage its

own affairs so as to achieve the orderly and expeditious disposition of cases. The prosecution has a special duty not to mislead; the government should, of course, never make affirmative statements contrary to what it knows to be the truth.

Mr. Arrington is showing strong factual issues that the AUSA's... intentionally premeditated calculated by design purposely lied and misrepresented to the Hon. Judge Arcara information concerning the "AcQuitted Evidence" as "New discovery evidence" in this case, through affirmative statements that were false. The omissions concerning material information that the government knew would have caused this Court to have an incorrect understanding as to the facts in the following motions (Dkt. Nos. 596, 602, 671, 705). The government knew if they switch the records involving the outrageous government misconduct from AUSA Wei Xiang, when he instigated known perjury to the grand jury on 01/16/2015, when the AUSA Xiang was presenting Jaquan Johnson testimony to the grand jury. This court would deny Mr. Arrington's request for this court to conduct an in camera inspection for both grand jury proceedings to see if the government procured and instigated known perjury on 01/16/2015 and on 06/19/2015 to see if the government fixed the perjury from D. Hunter and J. Johnson, (see Dkt. No. 602) when AUSA Lenihan

lied and switch the grand Jury testimony and used J. J. trial testimony in the response motion (Dkt. No. 602). This outrageous and egregious misconduct by the government is a fraud upon this court, and a serious violation of Mr. Arrington's constitutional rights. This unfair prejudice need a further investigation by this court to prevent a miscarriage of justice.

The Second Outrageous and egregious prosecutorial misconduct claim is when AUSA Lenihan intentionally suppressed Impeaching evidence, and instigated Known perjury from D. James during trial about prior criminal conduct involving three (3) criminal cases, the government been knew about and helped prolong the prosecution in all three (3) cases until D. James testified at the trial/retrial.

It is well established that the prosecution has an obligation under the due process clause to disclose to the defendant material exculpatory and Impeaching evidence. To establish a Brady violation, a defendant must show that: (1) the prosecution, either willfully or inadvertently, suppressed evidence; (2) the evidence at issue is favorable to the defendant; and (3) the failure to disclose this evidence resulted in prejudice. The suppression of exculpatory or impeaching evidence does not constitute a constitutional

violation unless the evidence is material. Undisclosed evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. And the prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case.

The denial of the "right of effective cross-examination" is constitutional error of the first magnitude requiring automatic reversal. In fact, effective cross-examination is so important in the legal system that it is described as beyond any doubt the greatest legal engine ever invented for the discovery of truth. Here is the lie that was told at the retrial a small summary of the trial testimony: T.T. on page 64, lines 1-25, Q. That letter was a lie because soon as you released from Jail on October 18, 2021, you was arrested for unlawfully fleeing from a police officer in a motor vehicle third degree, reckless driver, and aggravated unlicensed operation, correct? Mr. Lenihan: Objection. THE Witness: No. THE COURT: Sustained. By the Defendant: Q. So, you didn't get arrested? MR. Lenihan: Objection. THE Court: Sustained. By THE Defendant: Q. How about on August 2nd, 2012 at 3:26pm, you threatened to Kill Shanique Devost and a juvenile with a gun and at one point, almost hitting Ms. Devost and the juvenile while threatening to kill them.

Witness 1 and Witness 2 signed statements supporting the victim's narrative. You remember that incident? Mr. Lenihan: Objection, Judge. This isn't what we discussed. THE COURT: Sustained. By the Defendant: Q. Was you charged with this crime on August 2nd, 2022? A. Yes. I was charged with a crime. T.T. on page 65, lines 1-25, Q. You was charged with threatening Shaniqua Devost and the juvenile correct? Mr. Lenihan: objection. THE COURT: Sustained. By the Defendant: Q. So, you remember being -- endangering the welfare of a child that day? Mr. Lenihan: Objection. THE COURT: Sustained. By the Defendant: Q. Was you just recently -- did you get caught with another weapon recently? A. No. Q. You never got caught with a weapon recently? A. No. Q. You don't have any knowledge of that? A. No. Q. So, you don't know you have a warrant for your arrest right now? A. I have a warrant for my arrest? Q. Yes. A. No. Q. Do you know about that indictment? A. No.

The AUSA Lenihan on this day, 09/12/2022, went so far as to make arrangements with the U.S. Marshal's, not to arrest D. James on this day, because Mr. James had to continue his cross-examination the next day, and the AUSA did not want James to come in to trial the next day with Jail clothing on because the Jury would have known James lied to them about the firearm possession.

AUSA Lenihan went out his duty intentionally trying to cover up D. James criminal cases as their witness. If this Impeachment disclosure was disclosed the outcome would have been in favor of the defense.

Rule 16 (a) and Rule 16, upon request of the defendant, the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial. A district Court has broad discretion in fashioning a remedy for the government's violation of its obligations under Rule 16 (a), including ordering the exclusion of evidence that was the subject of a Rule 16 (a) violation, is not grounds for reversal unless the violation caused the defendant "Substantial prejudice," citing U.S. V. Mc Elroy, 697 F.2d 459; "Substantial prejudice" means "the prejudice resulting from the government's untimely disclosure of evidence, rather than the prejudice attributable to the evidence itself. citing U.S. V. GAF Corp, 884 F.2d 670.

In Mr. Arrington's case, the AUSA Lenihan failed to disclose evidence that the defense might have used to impeach the

government's witnesses or a witness "D. James", by showing bias or interest. Impeachment evidence, however, as well as exculpatory evidence, falls within the Brady rule. citing Giglio v. U.S., 405 U.S. 150, 154 (1972). Such evidence is "evidence favorable to an accused", Brady, 373 U.S. at 87, referencing Davis v. Alaska, 415 U.S. 308 (1974); also citing Bagley v. Lumkin, 719 F.2d 1462; "so that if disclosed and used effectively, it may make the difference between conviction and acquittal. Also see motion to compel (DKT.No.757) on 08/22/2022, compelling AUSA Lenihan to disclose all Brady and Impeachment/3500 material. AUSA Lenihan and his FBI SA's all knew D. James was out there committing violent crimes. There is a total of (3) three Buffalo Police Reports labeled Complaints; (1) dated 22-2140576, August 2, 2022; (2) Dated October 18, 2021, 21-2881108 and; (3) Dated August 7, 2021, there is nothing in the system of this crime, when the securing order claims that the charges of 265.0303, criminal possession of a weapon, a loaded firearm, have an incident date of August 7, 2021. Now Keep in mind the arrest warrant was only generated 13 months later on 09/09/2022, at the start of Mr. Arrington's retrial. It is very difficult and disturbing to believe that the government and its FBI SA's had no idea the person in possession of a weapon was "D. James" some (13) months later. How was the incident generated if "they THE Federal Government or the Buffalo"

Police, had no identity of the person "Guilty of the charge". It is also ironic that "D. James" Warrant only emerges when the government is near to putting "D. James" on the stand. There isn't even an arraignment date nor records that shows D. James being processed for this crime. AUSA Lenihan intentionally suppressed these Impeachment evidence from the defense, and help cover it for (13) months until this witness testify at the retrial. This Impeachment evidence was material because D. James lied about it because he thought the government had his back, because they allowed him to commit crimes as an protective witness. This is Outrageous and egregious Misconduct that calls for an order to dismiss this indictment with prejudice.

The third (3rd) claim of Outrageous and egregious prosecutorial Misconduct is when AUSA Lenihan instigated Known perjury from another (4) four trial witnesses, J. Kazukiwicz, J. Grant, M. Worthy, and Henry Lloyd.

In asserting a prosecutorial Misconduct claim, the defendant face a heavy burden, because the misconduct alleged must be so severe and significant as to result in the denial of their right to a fair trial. In evaluating a prosecutorial misconduct claim, the Court considers: (1) the severity of the alleged misconduct, (2) the curative

Measures taken; and (3) the likelihood of conviction absent any misconduct.

It is serious Misconduct for a prosecutor to obtain a conviction through the knowing use of false evidence citing *U.S. v. Wallach*, 935 F. 2d 445, 473 (2d Cir. 1991); also citing *Miller v. Pate*, 386 U.S. 1, 7 (1967) (prosecution misrepresented paint-stained shorts as blood-stained) or merely "Allows it to go uncorrected when it appears." *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (prosecutor failed to correct witness's false testimony that he had no agreement prosecution).

Here at Mr. Arrington's retrial, the government's Key-witnesses committed perjury, and the AUSA Lenihan instigated and procured the false testimony, and instead of taking steps to minimize the perjury, and its effects, the government improperly attempted to rehabilitate the witnesses. For an example, government witness Jerome Grant sent numerous letters to this Court, without his counsel's knowledge. On numerous occasions Hon. Hugh B. Scott admonished J. Grant not to send letters to the Court. (see on 01/06/2015 DKT.No. 137 Hon. Judge Scott warns Grant, again on 06/03/2015 DKT.No. 197, and again on 07/26/2015 DKT.No. 251). AUSA Lenihan known about the numerous letters and Bail motions sent by J. Grant himself signed by a public notary, without his counsel's knowledge.

On direct examination, the government did not address Grant about his prior assertions under oath in a sworn affidavit to support his Bail motion for pre-trial release. AUSA Lenihan Known that J. Grant made sworn statements under oath that J. Grant was "Not a Gang Member Nor a drug dealer", when Grant filed his bail motion on this Court's record as true. ("See government's trial exhibit # 3506 BB Jerome Grant's Bail motion as an exhibit to support this instigation of perjury"). Also see J. Grant trial testimony on page 54, lines 3-19, Q. If you read it, if you go to the page, could you read to the jurors what it says -- application of bail motion. It says, Dear Judge Scott. Could you continue to read that to the jurors, please? A. Dear, Judge Scott -- want me to read the whole letter? Q. Yes, where it get to -- I'll tell you to stop when you get there. A. Application for bail motion. Dear, Judge Scott, as you know, I have been detained since July of 2014. I have been charged with one count of conspiracy on August 4th, 2014. I was ordered with detained but without prejudice. Although I am still currently on federal probation, I have not been violated by any means by the Honorable Judge Skretny. Although I reference my innocence in this case against me. According to the criminal complaint and discoveries, my relevant conduct is minimum in both. I am not a gang member and or a drug dealer. Nor is this -- (DKT. No. 972). Jerome Grant direct Trial Testimony by AUSA Lenihan states on page 18, lines 14-17, (DKT. No. 972), Q. Is that a

neighborhood-based street gang? A. Yeah. Q. Would you consider yourself a member of the Schuele Boys? A. Yeah. Grant also gave false testimony that Arrington sold him drugs in 2000 and 2014, T.T. on page 20, lines 8-20, (DKT.No. 972). AUSA Lenihan never addressed Grant's prior statements made under oath in the affidavit supporting Grant's Bail motion. AUSA Lenihan procured this false testimony, and instigated this false testimony trying to get a conviction no matter how far he had to go to do it. This Outrageous and egregious prosecutorial misconduct calls for an dismissal with prejudice.

Government witness Marcel Worthy committed perjury, and AUSA Lenihan instigated and procured that false testimony. AUSA Lenihan tried to suppress M. Worthy affidavit he sent to Mr. Arrington on April 6, 2016, But, Arrington objected and the Court compelled the government to disclose it to the defense. On direct examination AUSA Lenihan addressed prior statements made by Worthy during an interview by FBI SA's when worthy denied being a witness to any alleged criminal activity committed by Arrington. But, the AUSA did not address the prior sworn affidavit Declaration pursuant to 28 U.S.C. § 1746 under penalty of perjury, from M. Worthy, sent to Mr. Arrington. Government witness M. Worthy sent Mr. Arrington a sworn Affidavit on April 6, 2016, under penalty of perjury that he never conspired to sell drugs with Arrington, Nor did he have any Knowledge Nor witness Arrington involved with any illegal activities. The affidavit was sent to Arrington, by Worthy after

he signed into an cooperation proffer agreement with the government in 2014 and 2015. (see defense exhibit #5 as an exhibit to support this motion to dismiss). AUSA Lenihan Known that M. Worthy was lying, but, took no steps to correct what he knew to be false, but, procured the false testimony and instigated it. citing *Napue v. Illinois*, 360 U.S. 264, 269 (1959). This Outrageous and egregious prosecutorial misconduct calls for an dismissal of the indictment with prejudice. (Trial Testimony on pages 75, 76, 77, lines 1-25, on 9/26/22).

Government witness J. Kazukiewicz testified on 09/13/22, the following is a brief summary. the perjury testimony AUSA procured and instigated when the AUSA and FBI SA Colunga, knew that the witness was never in a secure room. T.T. on page 19, lines 12-20, Q. During this recess we just took, a five-minute recess, a ten-minute recess -- A. Okay. Q. did anybody come in the room and say anything to you or threaten you or say anything to you when you just stepped out the courtroom? When they just took you out of here, did any agents or anybody come in the room, say anything to you, threaten you? A. why would they? AUSA Lenihan knew this witness was given false testimony, But, took no steps to correct what he knew to be false, But, He procured the false testimony, and continued to instigate that false testimony. Once the AUSA asked the Judge for a brief recess. see T.T. on page 21, lines 13-25, MR. Lenihan: We want to bring something up with the Court.

THE COURT: You want me in here? MR. Lenihan: Please.

THE COURT: All right. Ladies and gentlemen could you step outside? (THE Jury left the room at 3:08 p.m.) Once the Jury left the Courtroom, AUSA Lenihan made false statements to the Court, instigating the perjury testimony that the witness was in a secure room outside the Courtroom, and No one had access to this witness, and the defendant is mad that the witness identified him as the shooter. FBI SA Colunga threw AUSA Lenihan under the Bus, and confirms that AUSA Lenihan Lied to this Court, when he instigated the Known perjury from J.K.. Here is the Trial Testimony from FBI SA Colunga on 09/27/22, page 74, lines 5-12, Q. So, she was never in a room where the - as the government told the Court, she was never in this secure room, correct? A. She was not in a room. She did not want to go into a room. Q. And she sat with you on the bench the whole time for the 20 minutes, correct? A. That's correct.

On 09/14/2022, when Mr. Arrington requested the Court to subpoena the Camera footage from outside the Courtroom to confirm who had access to the trial witness J.K, and to confirm if she was ever in a secure room. (see DKT.No. 832). Once the Court granted Mr. Arrington's request for the camera footage from outside the courtroom, for where the witness was suppose to be held as the AUSA claimed, and made affirmative

Statements to this Court on 09/13/22, that No one had access to this witness, because, she was in a secure room. AUSA Lenihan made affirmative statements intentionally misleading the court, when AUSA Lenihan instigated Known false testimony. (see oral arguments after the hearing when the camera footage exposed the truth, and AUSA Lenihan got caught instigating the false testimony on 09/14/2022).

This Outrageous governmental misconduct has infected the trial proceedings and interfered with the jury's ability to weigh the trial testimony. This Outrageous and egregious prosecutorial misconduct calls for an dismissal of the indictment with prejudice.

THE AUSA'S is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that Justice shall be done. As such, he is in a peculiar and very definite sense the servant of law, the two fold aim of which is that guilt shall not escape or "innocence suffer". He may prosecute with earnestness and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction, as it is to use every legitimate means to bring about a just one. citing Berger

V. U.S., 295 U.S. 78, 88 (1935).

After reviewing a number of instances of prosecutorial misconduct, including, inter alia, failing to warn the jurors of a credibility problem of a key witness or witnesses as the constitutional law requires. This outrageous and egregious governmental misconduct requires a dismissal of the superseding indictment with prejudice.

The use of such false testimony has "involved a corruption of the truth-seeking function of the pretrial and the trial process." THE taint of J. Kazukiewicz, J. Grant, D. Hunter, Jaquan Johnson, M. Worthy, D. James, H. Lloyd, and AUSA Lenihan procuring the false testimony, and took further steps to instigate it, is not erased, because their untruthfulness affects the credibility of all the witnesses, and the AUSA's Lenihan's, AUSA Tripi, AUSA Lipman, and AUSA Wei Xiang. Also "the retrial Jurys estimate of the truthfulness and reliability of the AUSA's, and a given witness may well be determinative of guilt or innocence."

THE perjury testimony from the AUSA, and his witnesses has unfairly prejudice Mr. Arrington's retrial to the point that all constitutional rights was violated, which denied Mr. Arrington a fair trial, and Due process, But, most importantly without all the perjury testimony, the jury would have found Mr.

Arrington Not "Guilty" on all Counts 1 through 8, and it would have never been a Deadlock Jury which resulted in a mistrial.

At Mr. Arrington's retrial, the Outrageous and egregious prosecutorial misconduct has violated Arrington's due process rights, and his rights to a fair trial, to call defense witness JaRon Ruth, when AUSA Tripi threaten Ruth not to testify for the defense.

Defense witness JaRon Ruth was threaten by AUSA Tripi, AUSA Tripi, told Mr. Ruth if he testify on Mr. Arrington's behalf, AUSA Tripi would make sure Ruth got the Maximum sentence in his criminal case. But, if Ruth help the government and testify as their witness against Arrington, AUSA Tripi would make sure Ruth got time served in his criminal case. This is what caused Ruth to plead the Fifth Amendment when Arrington called Ruth in to trial as the defense witness.

Mr. Ruth reached out to Arrington's family, because Ruth was stressed out that the AUSA on his case threaten him. Ruth was stressed out because he knew Henry Lloyd was lying for AUSA Lenihan to get out of Jail, because Lloyd was found guilty at his trial, and was facing a lot of time.

Mr. Arrington, Ruth, and H. Lloyd was all housed at Cattaraugus County Jail together on J-Dorm, and Ruth trial testimony would have proved that Lloyd's trial testimony was false, and made up by the government and his FBI SAs. Ruth, and Mr.

Arrington never trusted nor dealt with H. Lloyd do to his history of cooperating and being a Known Jail house informant.

This Outrageous prosecutorial misconduct has violated Mr. Arrington's rights to a fair trial, and also violated Arrington's due process rights. The Sixth Amendment guarantees a criminal defendant the right to present witnesses to establish his defense without fear of retaliation against the witness by the government's attorney's. In addition, the Fifth Amendment protects the defendant from improper governmental interference with his defense. Thus, substantial government interference with a defense witness choice to testify may violate the due process rights of the defendant. This prosecutorial intimidation is a clear error, citing U.S. V. Stein, 541 F. 3d 130.

Mr. Arrington's rights to a fair trial has been violated, along with his due process rights, in its entirety. A defendant has a fundamental right under the Fifth Amendment to fairness in the criminal process, including the ability to get and deploy in his defense all resources lawfully available to him, free of knowing or reckless government interference. This is conduct that shocks the conscience, when AUSA Tripi, who's ^{prosecuting a} ~~is~~ ^{an} unconnected case,

threaten's and coerced the defendant in his case, who is the defense witness, JaRon Ruth, not to testify at Arrington's trial, denied Arrington's Fifth and Sixth Amendment rights to due process and a fair trial. This Outrageous and egregious prosecutorial Misconduct requires an dismissal of the Superseding indictment with prejudice. Also the prejudice and unfair prejudice Arrington suffered from this misconduct was the ability to get and deploy in his defense all resources lawfully available to him, which was calling Mr. Ruth as his rebuttal witness for the false testimony from H. Lloyd. If the AUSA would not have interfered with Arrington's defense the Jury would have found Arrington "Not Guilty" on all counts and Arrington Lost those rights.

THE (4th) Fourth claim of Outrageous and egregious prosecutorial misconduct, is when AUSA Lenihan offered a total of (3) three inmates time off to lie at Mr. Arrington's up and coming trial. Henry Lloyd's co-defendant Roman Dunnigan was offered time off to lie to the grand Jury, about the bogus Search and Seizure Warrant executed right after Mr. Arrington's retrial, which ended in a mistrial. (Also see affidavits from Dunnigan and Mr. Fletcher to support the Misconduct and how it was so easy for Henry Lloyd to lie for a get out of jail free card to say what ever the government want you to say). (see affidavits as an exhibit attached).

During the bogus Search and Seizure, AUSA Lenihan used a taint team to gain access to the defense strategy, in which AUSA Lenihan took privileged materials that "was not covered" in the scope of the warrant, and went so far as to hide the privileged material in the protective order as if they were protected materials, that was part of the government's 3500 disclosures (see DKT. Nos. 922, 912, 952) as an exhibit to support this motion to dismiss.

Those privileged materials came from Mr. Arrington's own independent investigation and was part of the (3rd) third trial defense strategy, which been exposed already due to the AUSA's violating Fed. R. Crim. P. 16(b)(2). (Also see P.I. Paul Lawrence affidavit as an exhibit to support this motion to dismiss).

This Court Also requested and ordered the government to produce all names of everyone from the government's team involved in this search and seizure, the documents that's been retained, and the taint review process, including explaining their roles in connection with those events. The government have not complied with the courts orders as of date. (see text order DKT. No. 912) Nor did the government's response state such. (see response DKT. No. 952).

The Sixth Amendment to the U.S. Constitution provides the rights to a fair trial. The privileged materials and documents are not within the scope of documents authorized by the Warrant. (see search and seizure warrant as an exhibit to support this motion to dismiss). Arrington's rights to a fair trial has been violated in its entirety. A defendant has a fundamental right under the Fifth Amendment to fairness in the criminal process, including the ability to get and deploy in his defense all resources lawfully available to him, free of knowing or reckless government interference. The U.S. Constitution provides the defendant protection under the due process clause to fundamental fairness to prepare an adequate defense for trial, citing *U.S. v. Stein*, 541 F.3d 130.

Materials Not subject to disclosure, pursuant to Fed. R. Crim. P. 16(b)(2), which embodies a "work product" principle, A defendant does not have to disclose "reports, memoranda's, or other documents" made in connection with the preparation of the case, statements made by the defendant or by government witnesses to the defendant, or the defendant's attorneys or investigators. citing *U.S. v. Nobles*, 422 U.S. 225, 234-36 (1975).

Public documents was not covered in the protective order, Nor did the search and seizure warrant state such. All materials

from the seizure was public information from Arrington's own personal independent investigation. Pursuant to Rule 16 (b) (2) work product doctrine, Scope of protection, is privileged documents that was never suppose to be disclosed nor not returned back to Mr. Arrington. This is the second time, the government and it FBI SA's have infringed upon Arrington's constitutional rights by Searching and Seizing evidence out Arrington's jail cell. The first illegal Search and Seizure without a search Warrant the government and his FBI SA's Robert Colunga destroyed evidence that proved Arrington's innocence. This Outrageous and egregious prosecutorial misconduct requires a dismissal of the indictment with prejudice.

Also the unfair notice that was prejudicial to Mr. Arrington's retrial has interfered with Mr. Arrington's ability to defend and to respond to the unfair notice, which was deliberate.

The government had a witness "Henry Lloyd" take the stand and give testimony that alleged that I, committed violent and heinous crimes that were not charged in this indictment. The allegations included multiple violent acts, including murder. Neither I, Nor this Court, had received prior notice that the government intended to present this evidence. We learned of that intention at the

same time that the jury heard this evidence.

This was a clear violation of the requirements of Rule 404, and of the directives of this Court.

On August 11, 2022, this Court issues a pretrial order directing the government to submit a memorandum of law outlining facts and legal arguments. The memorandum was to include all foreseeable evidentiary issues that may arise at trial. The deadlines for this memorandum and any motions in limine was set for August 25, 2022.

On September 1, 2022, at the pretrial conference, the government turned over additional 3500 materials in an electronic format. The government and Court was made aware that I was just moved to Niagara County Jail and in quarantine, and I did not have any access to electronic material, yet. I requested physical copies, and the Court encouraged the government to give me physical copies as soon as possible, but the government maintained that it would only provide me physical copies for use in the courtroom.

In the disclosure on September 1, 2022, that I did not yet have access to, there was 164 documents. Some of those documents were individually over 100 pages. Buried within

all of those documents were sixteen 3500 exhibits for Henry Lloyd.

The government did not provide any notice, oral or written, that they intended to admit evidence under Rule 404(b) based on 302 reports buried within the 3500 materials.

Neither I, nor the Court, would have any reason to think that the government intended to offer 404 evidence related to information buried in the 3500 material, as the statute specifically requires them to give written notice, which includes the requirement that they "articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose".

This requirement was specifically added to the statute on December 1, 2020, when the statute was amended to clarify and increase the government's notice obligations.

The government did not provide notice sufficient to satisfy the 2020 amendments. They are taking the position that information buried in 3500 material provides sufficient notice, but that does not meet the requirements of Rule 404. That would not have even been sufficient under the statute

prior to the amendments.

The government did make motions to admit other items of evidence under rule 404, which I was given time to respond to and the Court was given time to consider. There was no reason to think that this evidence could be treated differently.

Instead, this evidence of alleged violence and murder, was snuck in through witness testimony and the unfair prejudice of that evidence is so substantial that there was no way that Mr. Arrington received a fair trial.

This was not evidence of other minor crimes. This was evidence of some of the most heinous acts that could possibly be alleged, and the government did not give the Court any notice that they intended to do this, and they did not give me notice, as required by the statute so I could have time to object in advance and prepare. This is a clear violation, also this misconduct requires a dismissal of the indictment with prejudice.

As Mr. Arrington points out in this motion and supporting affidavit, the Outrageous and egregious prosecutorial misconduct has tampered with the administration of Justice.

The AUSA's intentionally lied and Misrepresented to the Court "Acquitted evidence," "The grand Jury testimony" in government's response motion (D.K.T. No. 603), instigated Known perjury at the grand Jury proceedings on 01/16/2015 and 06/19/2015. Instigated Known perjury at Arrington's retrial.

Pursuant to Fed. R. Crim. P. 12(b)(1) allows a defendant in a criminal prosecution to move to dismiss the indictment "based on defects in the institution of the prosecution." Moreover, the court is empowered to inquire whether the grand jury's function in this case was undermined by irregularitiess occurring before that body, although, "as a general matter, a district court may not dismiss an indictment for errors in grand jury proceedings unless such errors prejudiced the defendants." *Bank of Nova Scotia v. U.S.*, 487 U.S. 250, 254 (1988). That case noted that dismissal of an indictment is appropriate where "the structural protections of the grand Jury have been so compromised as to render the proceedings fundamentally unfair." *Id.* at 257.

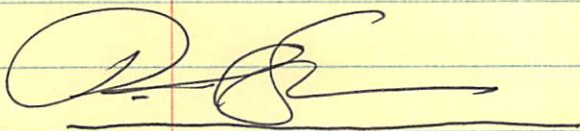
On August 22, 2022, right before the retrial, AUSA Lenihan sent a letter to this court, Standby Counsel Mr. Foti, and Mr. Arrington explaining that he unredacted FBI 302's reports, and grand Jury testimony for the following witnesses:

Spencer Rogers JR, Jaquan Johnson. (see AUSA Lenhan's Letter as an exhibit to support this motion for a dismissal).

The disclosures and unredacted grand jury testimony supports Mr. Arrington's strong particularize need for this court to conduct a in camera inspection on both dates, dates that shows Known perjury was submitted to the grand jury. Jaquan Johnson grand Jury testimony on 02/20/2015 and Damon Hunter's grand Jury testimony was never fixed on 06/19/2015 when AUSA Wei Xiang superseded the indictment. The disclosures of Rogers and Johnson grand Jury testimony on August 22, 2022, supports Arrington's Rule 6 motion to produce (DICT. No. 596).

Consequently, Mr. Arrington is respectfully requesting that this Court grant this motion for an order dismissing this Superseding indictment with prejudice, because of Outrageous and egregious prosecutorial misconduct during the prosecution of this case, also pursuant to Fed.R.Crim.P. 12(b)(1) defects in the institution of the prosecution.

COUNTY OF N. AGARA } ss.
STATE OF NEW YORK }
SWORN AND SUBSCRIBED TO BEFORE ME
THIS 2ND DAY OF APRIL, 2023



PAUL H. LAWRENCE
Notary Public - State of New York
Registration No. 01LA5084737
Qualified in Erie County
My Commission Expires: Sept. 8, 2025

Respectfully Submitted,
RODERICK ARRINGTON pro se
P.O. Box 496
Lockport, N.Y. 14095
Roderick Arrington
Dated: April 2, 2023.

Exhibit F



U.S. Department of Justice

United States Attorney
Western District of New York

Federal Center
138 Delaware Avenue
Buffalo, New York, 14202
716/843-5700
fax 716/551-3052
Writer's Telephone: 716/843-5805
Writer's fax: 716/551-3052
Jeremiah.Lenihan@usdoj.gov

August 22, 2022

Mr. Roderick Arrington

Re: **United States v. Roderick Arrington**
15-CR-33-A

Dear Mr. Arrington:

Please be advised that in reviewing the 18 U.S.C. § 3500 materials related to Damario James, the government believes that previously redacted information should have been provided to you due to the potential exculpatory nature of the information. Notably, according to a FBI 302 report from a proffer interview the FBI conducted with Damario James on August 7, 2014, James told the FBI that a person who he identified as Tremaine Jacobs a/k/a Teeter told James that Jacobs witnessed Aaron Hicks shoot and kill Quincy Balance in retaliation for the murder of Walter Davison. This information was previously redacted and the 302 was marked as 3502F. The government learned that this material had been undisclosed and redacted late last week. We took the following steps: a) met with Damario James and b) unredacted all of Damario James and other the government cooperating witness's 302s, as well as Grand Jury testimony and c) provided the unredacted materials to the Allegany County Jail on August 19, 2022. The Allegany County Jail notified the United States Attorney's Office on August 22, 2022 that the Jail would not accept the emailed materials, and instead required the materials to be mailed. Also, in meeting with James, he does not remember if Jacobs told him that Jacobs witnessed the shooting or if Jacobs heard from others that Hicks committed the murder.

Because this information may be material to your defense, we believed this information should be highlighted for you. Additionally, we will make efforts to subpoena Tremaine Jacobs a/k/a Teeter should you so require. Please contact your standby counsel, Mark Foti, Esq., if you seek our assistance in this regard.

Very truly yours,

TRINI E. ROSS
United States Attorney

BY: 
Jeremiah E. Lenihan
Assistant United States Attorney

Cc: Mark Foti Esq.
Judge Arcara's Chambers
JEL/swb

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

Case No. 1:15-CR-00033(EAW)(HKS)

RODERICK ARRINGTON a/k/a Ra-Ra,

Defendant.

_____/
Assigned to: Hon. Elizabeth A. Wolford

SUPPORTING AFFIDAVIT

DECLARATION OF ROBERT B. FLETCHER

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

- 1). I, Robert B. Fletcher, do hereby solemnly swear and depose that my date of birth is August 15, 1990.
- 2). I am currently incarcerated in the Niagara County Correctional Facility in Lockport, New York and my inmate ID is 148236.
- 3). On November 28, 2022 I pled guilty in my Federal Criminal Case that was prosecuted by Jeremiah Lenihan from the U.S. Attorney's Office.
- 4). Within a week after I pled guilty my attorney Barry Donohue called the jail and left a message for me to contact him.
- 5). As soon as I called my attorney he asked me if I felt comfortable having a conversation over the phone, considering the government had previously admitted to recording my calls with my attorney. Did I feel they were still doing this?



6.) Because I had already pled guilty, I didn't feel that they were still recording my calls with my attorney.

7.) My attorney told me if I were to cooperate with the U.S. Attorney regarding Roderick Arrington my sentence time would be less than my plea to 87 months.

8.) My attorney said he knew that I did not cooperate regarding any of my people but seeing how I didn't know Roderick Arrington the government was wondering if I would cooperate with them regarding his upcoming trial.

9.) The government knew that Roderick Arrington and I were housed in the same unit at the Niagara County Correctional Facility.

10.) My attorney said that the government wanted me to provide them with anything I heard about Roderick Arrington.

11.) I was amazed that I was being asked about what I heard instead of what I would know from direct conversations with Roderick Arrington.

12.) I have never had any conversations with Roderick Arrington about his or my case and have had no real relationship with him.

13.) If needed I am willing to appear as a witness at any future proceeding for Roderick Arrington.

14.) I have read the following statement consisting of two pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

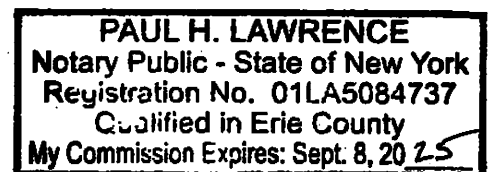
I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 18th day of March 2023.



Robert B. Fletcher

NCCF ID 148236



County of Niagara }
State of New York } SS
Sworn and Subscribed to before me
This 18th day of March, 2023



**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

Case No. 1:15-CR-00033(EAW)(HKS)

RODERICK ARRINGTON a/k/a Ra-Ra,

Defendant.

_____/

Assigned to: Hon. Elizabeth A. Wolford

SUPPORTING AFFIDAVIT

DECLARATION OF ROMAN A. DUNNIGAN

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

- 1). I, Roman A. Dunnigan, do hereby solemnly swear and depose that my date of birth is March 29, 1979.
- 2). I am currently incarcerated in the Niagara County Correctional Facility in Lockport, New York and my inmate ID is 114138.
- 3). Around November 2022 my attorney, Brian Parker, called the jail and left message for me to call him.
- 4). I called Brian Parker and he asked if I was locked up with Roderick Arrington. I said I was.
- 5). My attorney said that AUSA Lenihan, who is the prosecutor in my case, wanted to know if I would come downtown to talk about Roderick Arrington. My attorney told them no before speaking with me.

- 6.) After speaking with me my answer was No.
- 7.) The US Attorney was asking if I was shown court paperwork and protected materials by Roderick Arrington.
- 8.) I had never spoken with Roderick Arrington about his case and was never shown any court documents including protective material by Roderick Arrington.
- 9.) I never discussed with Henry Lloyd anything regarding Roderick Arrington's court paperwork or court protected materials, all of which I have never seen as I indicated in #8.
- 10.) I have never had any conversations with Roderick Arrington about any illegal activity.
- 11.) I have read the following statement consisting of two pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

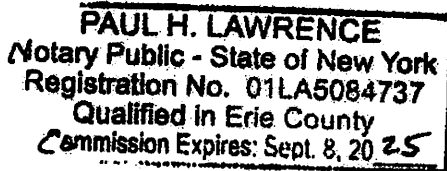
I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 25th day of March 2023.

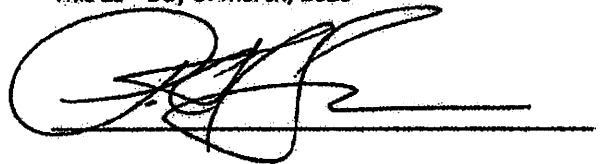


Roman A. Dunnigan

NCCF ID 114138



County of Niagara }
State of New York } SS
Sworn and Subscribed to before me
This 25th Day of March, 2023



**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

Case No. 1:15-CR-00033

RODERICK ARRINGTON,

Defendant

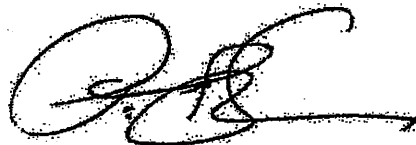
Assigned to: Hon. Elizabeth A. Wolford

SUPPORTING AFFIDAVIT

DECLARATION OF PAUL H. LAWRENCE

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

- 1). I, Paul H Lawrence, do hereby solemnly swear and depose that my date of birth is September 8, 1969 and that I currently reside at 132 Snug Haven Ct, Tonawanda, New York 14150.
- 2). I am a Licensed Private Investigator in the State of New York, the sole owner of Empire Investigations and have been conducting investigations for 28 years.
- 3). I have been an assigned investigator for the defendant Roderick Arrington for the purposes of conducting defense investigation into his criminal case. Because



Roderick Arrington is acting Pro Se I report directly and only to him with investigative materials for his defense, as per his instructions.

4). As part of my recommendations to Roderick Arrington and with his concurrence I began to conduct inquiries into both government & defense witnesses for the purposes in part to determine credibility.

5). My searches of each individual were done through the online Federal Court public access system known as PACER, New York State Department of Corrections Incarcerated Lookup found on their public site and the Erie County Clerk's Office of Actions & Proceedings onsite public access computer.

6). PACER records if available would be reviewed online and saved as PDF documents. Any available records from NYS DOC would be saved as a PDF.

7). Erie County Clerk would require a signed request form to be completed in order to review any available court records and also for obtaining any certificates of disposition or copies of court documents.

8). Law Enforcement Agency records would be requested via a FOIA letter under Public Officer's Law and redacted copies of reports would be for the most part provided by the agency to us electronically as a PDF document.

9). All documents were saved in my master file system under the case file number assigned to Roderick Arrington's case. Only I have access to this file and its contents.

10). All those documents that I believed were relevant to Roderick Arrington's defense were printed by me and brought by me to the Niagara County Jail. From there a copy of all those documents that I was going to review and leave with Roderick Arrington were photocopied by Deputies. I was instructed that I could only provide him with the copies they made for me and not my originals.

11). I provided Roderick Arrington copies of documents from Federal Court case 1:03-mj-02198-HBS-1 regarding Demario James. A total of seven pages were provided consisting of the case docket summary and document #27, Information Pursuant to 21 U.S.C.

12). I provided Roderick Arrington copies of documents from Federal Court case 1:05-cr-00145-RJA regarding Demario James. A total of twenty-six pages were provided consisting of document #30 Plea Agreement and Rule 11



Acknowledgments, document #34 Judgment in a Criminal Case and document #46 Judgment in a Criminal Case.

13). I provided Roderick Arrington copies of documents from Federal Court case 1:14-cr-00134-RJA-HBS regarding Damario James. A total of forty-five pages were provided consisting of document #53 Indictment, document #518 Plea Agreement, document #709 Judgment in a Criminal Case, document #893 Motion to Reduce Term of Supervised Release by One Year, document #898 Notice of Motion, document #898-1 Defendant's Exhibit A, document #896 Arrest Warrant, document #907 Notice of Motion, document #910 The Government's Opposition to Defendant's Motion to Release, document #925 Notice of Motion, document #929 Order and document #937 Order Dismissing Violation Petition for Offender Under Supervision.

14). I provided Roderick Arrington copies of documents from the Erie County Clerk's Office Actions & Proceedings regarding Damario James. A total of thirteen pages were provided consisting of a Certificate of Disposition, Writ of Habeas Corpus Ad Prosequendum and Indictment from Erie County Indictment No. 2013-1123, a Certificate of Disposition, Writ of Habeas Corpus Ad Prosequendum and Indictment from Erie County Indictment No. 01417-2019 and a Certificate of Disposition, Writ of Habeas Corpus Ad Prosequendum, Indictment and Affidavit Consenting to be Sentenced in Absentia from Erie County Indictment No. 05233-2003.

15). I provided Roderick Arrington copies of police reports that involve Damario James that were provided to me under FOIA from the Buffalo Police Department. A total of twenty pages were provided consisting of complaint numbers 22-2140576, 22-2881108, 19-1380168, 18-2880465, 14-1170514, 14-0230501, 13-2060582, 13-1850333, 13-1140784, 11-0430031, 10-2600373, 10-1400792, 09-2280589 and 03-3150264.

16). I provided Roderick Arrington copies of records on file with the Erie County Sheriff's Department that involve Damario James and were received under FOIA. A total of three pages were provided consisting of a Bail Certificate of Release, Securing Order and Summary of Charges from Erie County Indictment IND-72801-22/002.

17). I provided Roderick Arrington copies of documents from Federal Court case 1:14-cr-00134-RJA-HBS regarding Jerome Grant. A total of forty-six pages were provided consisting of document #319 Plea Agreement, document #570 Defendant

Grant's Statement with Respect to Sentencing Factors, document #570-1 letter from Tonya Marie Carmichael, document #588 Judgment in a Criminal Case, document #913 handwritten statement by Jerome Grant, document #975 handwritten statement by Jerome Grant and document #981 Decision and Order.


18). I provided Roderick Arrington copies of documents from Federal Court case 1:07-cr-00200-WMS-JJM regarding Henry Lloyd. A total of twenty-five pages were provided consisting of the case history, document #1 Indictment, document #2 Order Setting Conditions of Release, document #41 Judgment in a Criminal Case, document #52 Plea Agreement and document #61 Notice of Motion and Motion to Set Conditions of Release.

19). I provided Roderick Arrington copies of documents from Federal Court case 1:12-cr-00181-RJA regarding Henry Lloyd. A total of sixty-nine pages were provided consisting of the case history, document #1 Information, document #3 Plea Agreement, document #4 Order Setting Conditions of Release, document #13 Notice of Motion and Motion for Bail Revocation, document #19 Government's Response to Defendant's Bail Motion, document #20 Exhibits A, B & C, document #67 Judgment in a Criminal Case, document #78 Amended Judgment in a Criminal Case, document #79 Request for Modifying the Conditions, document #82 Amended Petition for Offender Under Supervision and document #110 Notice of Motion.

20). I provided Roderick Arrington copies of documents from Federal Court case 1:17-cr-00119-RJA-JJM regarding Henry Lloyd. A total of twenty-five pages were provided consisting of document #1 Indictment, document #198 Jury Verdict and document #314 Government's Supplemental Response to the Presentencing Report.

21). I provided Roderick Arrington copies of documents from Federal Court case 1:15-cr-00020-RJA-HBS regarding Damon Hunter. A total of forty-six pages were provided consisting of the case history, document #1 Indictment, document #35 Plea Agreement, document #43 Defense Sentencing Memorandum, document #46 Judgment in a Criminal Case, document #50 Request for Modifying the Conditions, document #60 Plea Agreement, document #65 Order Modifying Conditions of Supervision, document #71 Judgment in a Criminal Case and document #75 Arrest Warrant.

22). I provided Roderick Arrington copies of police reports that involve Damon Hunter that were provided to me under FOIA from the Buffalo Police Department.



A total of nineteen pages were provided consisting of complaint numbers 22-2300519, 13-1500640, 13-0980827, 12-2870601, 12-2430722, 12-1340807, 12-1120908, 10-1410083, 08-2330414, 07-3170607, 07-3170426 and 07-0550299.

23). I provided Roderick Arrington copies of police reports that involve Damon Hunter that were provided to me under FOIA from the Town of Tonawanda Police Department. A total of six pages were provided consisting of complaint numbers 22-242075, 22-240581, 22-240510 and 22-230396.

24). I provided Roderick Arrington copies of NYS Department of Corrections Inmate Information on Damon Hunter that were available on the publicly accessible NYS DOC website under incarcerated lookup. A total of two pages were provided consisting of DIN 09B0239 report and DIN 14B3841 report.

25). I provided Roderick Arrington copies of documents from Federal Court case 1:14-cr-00134-RJA-HBS regarding Spencer Rogers. A total of thirty-six pages were provided consisting of document #255 Plea Agreement, document #740 Sentencing Memorandum, document #740-1 Letters to Judge Arcara by Spencer Rogers and supporters and document #787 Judgment in a Criminal Case.

26). I provided Roderick Arrington copies of court case information from Ohio Courts, a publicly accessible site, regarding Spencer Rogers. A total of twenty-six pages were provided consisting of case information on criminal cases CR-85-199017-B, CR-89-237386-ZA, CR-91-266764-ZA, CR-91-268411-ZA, CR-93-294829-ZA, CR-94-310367-ZA and CR-95-323870-ZA.

27). I provided Roderick Arrington copies of NYS Department of Corrections Inmate Information on Spencer Rogers that were available on the publicly accessible NYS DOC website under incarcerated lookup. A total of one page was provided consisting of DIN 09B1147 report.

28). I provided Roderick Arrington copies of police reports that involve Deshawn Allen that were provided to me under FOIA from the Buffalo Police Department. A total of fifteen pages were provided consisting of complaint numbers 17-3320676, 16-0590343, 15-2460521, 15-1850439, 15-1270256, 12-2220918, 12-2070869, 12-1580669, 12-1580609 and 12-1540738.

29). I provided Roderick Arrington copies of documents from the Erie County Clerk's Office Actions & Proceedings regarding Deshawn Allen. A total of nine pages were provided consisting of a Certificate of Disposition, Indictment and Uniform Sentence & Commitment from Erie County Indictment No. 00883-2015

and a Certificate of Disposition, Statement Pursuant to CPL 400.21 Second Felony Offender and Uniform Sentence & Commitment from Erie County Indictment No. 02423-2017.

30). I provided Roderick Arrington copies of NYS Department of Corrections Inmate Information on Deshawn Allen that were available on the publicly accessible NYS DOC website under incarcerated lookup. A total of two pages were provided consisting of DIN 16B1352 report and DIN 18B2357 report.

31). I provided Roderick Arrington copies of police reports that involve Christopher Paige that were provided to me under FOIA from the Buffalo Police Department. A total of twenty pages were provided consisting of complaint numbers 21-1841009, 20-2370427, 20-1200324, 18-1930879, 16-1461046, 15-1940084, 15-1240862, 15-1240529, 15-0681003, 14-1870349, 13-2260845, 13-2070187, 13-1690330, 12-3600171 and 12-0810449.

32). I provided Roderick Arrington copies of documents from the Erie County Clerk's Office of Actions & Proceedings regarding Christopher Paige. A total of five pages were provided consisting of a Certificate of Disposition, Waiver of Indictment, Waiver of Appeal, IDV Referral Form and New Arrest Notice from Erie County Indictment No. 00993-2016.

33). I provided Roderick Arrington copies of police reports that involve Nathan Sanders that were provided to me under FOIA from the Buffalo Police Department. A total of forty-one pages were provided consisting of complaint numbers 22-1870246, 21-2400383, 21-1320708, 20-0630835, 19-3390249, 19-3360585, 16-2671034, 16-2591027, 16-2380636, 16-2080811, 14-2120382, 13-3080421, 13-1310778, 12-0440499, 11-2920803, 11-1171050, 10-3340326, 10-2460467, 10-2460307, 10-1880297, 10-1820243, 09-1891115, 08-1841060, 08-1520751, 06-3361144, 05-2070464, 05-0590191, 05-0060209 and 04-3640623.

34). I provided Roderick Arrington copies of documents from the Erie County Clerk's Office Actions & Proceedings regarding Nathan Sanders. A total of one page was provided consisting of a Certificate of Disposition from Erie County Indictment No. 00874-2013.

35). I provided Roderick Arrington copies of police reports that involve Renee Smith that were provided to me under FOIA from the Buffalo Police Department. A total of nine pages were provided consisting of complaint numbers 22-1870612, 16-2570525, 16-2141068, 16-2030873, 16-1930132, 12-1951318 and 12-1941183.

36). I provided Roderick Arrington copies of police reports that involve Roxanne Masoho that were provided to me under FOIA from the Buffalo Police Department. A total of twelve pages were provided consisting of complaint numbers 22-1500030, 21-2990681, 20-3390312, 19-2450345, 18-2660242, 18-1430335, 16-0770277, 15-2040558, 12-2480745 and 09-3240190.

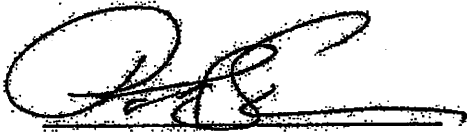
37). I provided Roderick Arrington copies of police reports that involve Terrell Hagans that were provided to me under FOIA from the Buffalo Police Department. A total of twenty-two pages were provided consisting of complaint numbers 19-2920966, 18-30000390, 16-2300708, 16-1780203, 16-1770867, 16-0130187, 16-0130099, 15-3150590, 15-2490240, 14-1560102, 13-1870296, 13-1310778 and 09-2240151.

38). Attached to this affidavit is a copy of the relevant pages from the expenses portion of my previously submitted CJA eVoucher with the lines for copies of the above referenced documents highlighted.

7). I have read the following statement consisting of seven pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 16th day of February 2023.

A handwritten signature in black ink, appearing to read 'P. Lawrence', with a large, stylized initial 'P' and a horizontal line extending to the right.

Paul H. Lawrence

COUNTY OF ERIE
DEPARTMENT OF
CENTRAL POLICE SERVICES
FORENSIC LABORATORY



45 ELM STREET, FOURTH FLOOR
BUFFALO, NEW YORK 14203-2600
PHONE: (716) 858-7409
FAX: (716) 858-7426

DNA ANALYSIS REPORT

LAB NUMBER: 14-07483

SUBMITTING AGENCY: Federal Bureau of Investigation

CASE NAMES: Arrington, Roderick - Defendant

CASE NO.: 245D-BF-3068082

DATE OF REPORT: 12/5/2014

REFERENCE NO.:

INV. OFFICER: Paris

Report Number 2

DNA was extracted from the swab of the semi-automatic pistol (Item 1B194.1). It was amplified using the polymerase chain reaction (PCR) and typed using capillary electrophoresis at the following genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, Amelogenin, D5S818 and FGA.

Conclusion:

Based on the PCR results, the DNA profile obtained from the swab of the semi-automatic pistol (Item 1B194.1) is a mixture of DNA from at least three unknown individuals, including at least one male individual and one female individual. The major DNA profile is that of an unknown female individual and was entered and searched in CODIS Local (Local DNA Databank). No matching DNA profiles were found. The major DNA profile does not qualify for submission to the State and National DNA Databanks. Known buccal samples are required for further comparison.


Item 1B194.1 DNA extracts will remain in laboratory custody.

I affirm that I conducted the analysis documented herein.

This report may contain the conclusions, opinions and/or interpretations of the analyst whose signature appears on the report.

This report does not constitute the entire case record, which may include worksheets, images, analytical data, and other documents.

CERTIFICATION: Pursuant to Criminal Procedure Law Sections 180.60(8) and 190.30(2), I certify that this copy is a true and accurate report concerning the results of tests and examinations which I, Sarah Murrin, public servant and Forensic Biologist II, conducted at the Erie County Central Police Services Forensic Laboratory as recorded in this Laboratory Case Number 14-07483, Report # 2. I am aware that false statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the New York State Penal Law.


Sarah Murrin
Forensic Biologist II

1st Trial ★
Evidence

Exhibit #6

My DNA
was not on
This firearm

Page 6
Exhibit #3

IN THE DISTRICT COURT OF THE UNITED STATES

for the Western District of New York

NOVEMBER 2014 GRAND JURY
(Impaneled 11/07/2014)

THE UNITED STATES OF AMERICA INDICTMENT

-VS-

DAMON HUNTER

Violations:
Title 18, United States Code,
Sections 1512(c)(2) and 1623(a)
(2 Counts)

INTRODUCTION

The Grand Jury Charges That:

At All Times Relevant to This Indictment:

1. The United States Attorney's Office for the Western District of New York, the Federal Bureau of Investigation, and the City of Buffalo Police Department were investigating the murder of persons on the East Side of Buffalo. The investigation specifically focused on murders that: were suspected to have been committed by convicted felons with firearms; were suspected to have been committed in furtherance of federal drug trafficking crimes or federal crimes of violence; or were suspected to have been committed by gang members or associates in aid of racketeering activity. Multiple provisions of federal law, including Title 18, United States Code, Sections 922(g)(1), 924(c), and 1959(a), and others, prohibited the possession and use of firearms by convicted felons; the possession and use of firearms in furtherance of federal drug trafficking crimes and federal crimes of violence; and murder in aid of racketeering.

Case 17-4092, Document 82, 10/29/2018, 2421074, Page 279 of 305

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*The agreement
and the lies*

JOHNSON -- MR. PARISI -- 9/18/17

514

1 A. No, not -- no.

2 Q. Not yet?

3 A. No..

4 Q. So, that day when you went back, did you go to law
5 enforcement, the police and did you tell them, I saw this
6 happen?

7 A. No.

8 Q. You didn't?

9 A. No.

10 Q. Why not?

11 A. Because I don't -- I didn't feel like -- well, I don't
12 know. It was -- I just didn't.

13 Q. Were you scared?

14 MR. LOTEMPPIO: Objection. Leading.

15 THE COURT: Overruled.

16 BY MR. PARISI:

17 Q. Were you scared?

18 A. No.

19 Q. Did there ever come a point in time when you came forward
20 and you told law enforcement about what you saw that night?

21 A. Yes.

22 Q. Was that in January of 2015?

23 A. Yes.

24 Q. How did you come forward to law enforcement?

25 A. What do you mean?

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admitted
to the
agreement
lies

JOHNSON -- MR. PARISI -- 9/18/17

515

1 Q. Did you -- did law enforcement come find you or did you
2 reach out to somebody in law enforcement?

3 A. I reached out to somebody in law enforcement.

4 Q. Why did you do that?

5 A. I don't know. Like, what do you mean?

6 Q. Well, I guess -- had you already pled guilty to the gun
7 case that you had in county court?

8 A. Yes.

9 Q. Had you already been sentenced for that case?

10 A. Yes.

11 Q. Were you receiving any benefit for coming forward?

12 A. Yes.

13 Q. Well, what benefit are you receiving for coming forward?

14 A. Well, right now?

15 Q. Yes.

16 A. Nothing.

17 Q. Did you ever receive a benefit for coming forward and
18 talking to the police?

19 A. Yes.

20 Q. What benefit did you receive?

21 A. Stolen car case.

22 Q. What happened to that stolen car case?

23 A. It got dropped.

24 Q. That was dismissed?

25 A. Yes.

Case 17-4092, Document 82, 10/29/2018, 2421074, Page281 of 305

Case 1:15-cr-00033-RJA-HBS Document 335 Filed 02/27/18 Page 125 of 199

The lies
and Nick
Names

Never say
any thing
about
Black
As the
Alleged
driver

JOHNSON -- MR. PARISI -- 9/18/17

516

- 1 Q. Did the government agree to dismiss those charges or did
2 that happen on its own?
3 A. I guess it happened on its own or something.
4 Q. Was there -- did you ever enter into an agreement with
5 the government to dismiss the stolen car charges?
6 A. Yes.
7 Q. I'm sorry?
8 A. Yes.
9 Q. When was that? That was back in January 2015?
10 A. Yes.
11 Q. When you met with law enforcement back in January 2015,
12 did you tell them what you told us here today?
13 A. Yes.
14 Q. Did you tell them who shot Shooter?
15 A. Yes.
16 Q. Did you receive any reduced sentence on a violation of
17 probation in exchange for your testimony?
18 A. No.
19 Q. I could show you Government Exhibit 34F. Do you
20 recognize who that is?
21 A. Yes.
22 Q. Who is that?
23 A. Dame.
24 Q. Is that the same Dame that you saw in the car with
25 Shooter on October 30th, 2012?

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My Attorney

JOHNSON -- MR. LOTEMPPIO -- 9/18/17

537

The lies
and Don't
ask about
black
To cover
up for
government

- 1 A. Yes.
- 2 Q. Okay. And that somebody must have went forward to the
- 3 D.A.'s office to talk the D.A. into giving you a plea bargain
- 4 to allow probation?
- 5 A. Yes.
- 6 Q. And that usually that District Attorney had a plea policy
- 7 of not offering pleas on gun cases. Do you remember all of
- 8 that?
- 9 A. I don't recall.
- 10 Q. And then, you got put on probation, right?
- 11 A. Yes.
- 12 Q. And you know that a probation violation then would carry
- 13 the original three-and-a-half-year sentence?
- 14 A. Yes.
- 15 Q. And while that new case for the stolen car was pending,
- 16 you came forward, right?
- 17 A. Yes.
- 18 Q. And you told the government that Mr. Arrington shot
- 19 Quincy Balance, right?
- 20 A. Yes.
- 21 Q. But you also told the Grand Jury that one of the reasons
- 22 you were doing that is because the word on the street was is
- 23 that Cheese shot him. We just showed you that testimony,
- 24 right?
- 25 A. Yes.

✓
here

8 Exhibits

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

Western District of New York

In the Matter of the Search of
 (Briefly describe the property to be searched
 or identify the person by name and address)

RODERICK ARRINGTON, located in the Cattaraugus
 County Jail

Case No. 20-M-5061

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search
 of the following person or property located in the Western District of New York
 (Identify the person or describe the property to be searched and give its location):

The person of RODERICK ARRINGTON, currently located in the Cattaraugus County Jail.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property
 described above, and that such search will reveal (Identify the person or describe the property to be seized):

DNA buccal samples from RODERICK ARRINGTON, containing DNA

YOU ARE COMMANDED to execute this warrant on or before April 22, 2020 (not to exceed 14 days)
☒ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the
 person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the
 property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory
 as required by law and promptly return this warrant and inventory to United States Magistrate Judge Michael J. Roemer
 (United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C.
 § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose
 property, will be searched or seized (check the appropriate box)

☐ for days (not to exceed 30) ☐ until, the facts justifying, the later specific date of

Date and time issued: April 18, 2020

1:03 PM

City and state: Buffalo, New York

Michael J. Roemer
 Judge's signature

Honorable Michael J. Roemer, U.S. Magistrate Judge

Printed name and title

Erie County Central Police Services Forensic Laboratory
45 Elm St.
Buffalo, New York 14203-9600
(716) 858-7409



REQUEST FOR LABORATORY EXAMINATION

SUBMITTING AGENCY: <u>ESI Sale Seeds</u>	DISTRICT/BUREAU: <u>ESI 24SD-BF-3068082</u>	CASE/CD NUMBER: <u>13-115-0547</u>
INVESTIGATING OFFICER: <u>SP1 Rob Colunga</u>	BUSINESS PHONE: <u>716-715-4244</u>	E-MAIL ADDRESS: <u>RColunga@fbi.gov</u>
CHARGES:	DATE/TIME OF OCCURRENCE:	PROSECUTOR: <u>AUSA Tripi</u>

CHECK IF APPLICABLE: ☐ Sale of controlled substance ☐ Asset Forfeiture Case ☐ Evidence Previously Submitted in this case

DEFENDANT(S): (last name, first name)	Date of Birth:	VICTIM(S): last name, first name	Date of Birth:
<u>Arrington, Roderick</u>	<u>12/81</u>		

CP5 Item #:	Agency Item #:	DESCRIPTION OF EVIDENCE:	EXAMINE FOR:	ADDRESS & WHERE OBTAINED:
<u>1</u>		<u>11/45 DNA Buccal Swab</u>	<u>Compare other/DNA - Seal to Tripi</u>	

COMMENTS:

DO NOT WRITE IN
THE SHADED AREAS

THIS SIDE TO BE COMPLETED BY THE SUBMITTING OFFICER

SUBMITTED BY: [Signature]
SIGNATURE
PRINT NAME: Rob Colunga
LOCKER NO.: 36
DATE/TIME SUBMITTED: 04/28/2020 1100

By signing this form you acknowledge that the Laboratory will select the appropriate items to be analyzed and the methods of analysis.

Go to www.erie.gov/forensiclab for Laboratory information, guidelines and forms.

THIS SIDE FOR LABORATORY USE ONLY

RECEIVED: ☒ Sealed KIT
☐ Unsealed ☐ Not Inventoried
☐ Improper Seal
☐ Received with cross outs/write overs
DATE/TIME REC'D: 4-23-2020 0739
RECEIVED BY: Don Grawe
LAB NO.: 14-07483 0
SUBMISSION #: 2 PAGE #: 1 OF 1
RESUBMISSION ☐

Exhibit Rule 6
#4

- b. The defendant knew and recognized the shooter as Roderick Arrington a/k/a Ra-Ra. The defendant also knew and recognized three individuals at the shooting associated with Arrington as Marcel Worthy a/k/a Cheese, Aaron Hicks a/k/a Boog a/k/a Boogy, and James Robbs a/k/a Jimmy. The defendant knew all four individuals through personal interactions with them on the East Side of the Buffalo, and knew that they believed that the defendant and Balance were involved in the shooting murder of Walter Davison a/k/a Matt on or about August 26, 2012, on Carl Street, Buffalo, New York.
- c. Hours after the shooting on August 30, 2012, the defendant gave a true statement to City of Buffalo Homicide Detectives detailing the circumstances of the shooting. The defendant accurately described how he and Balance stopped to speak with Hicks regarding the Davison murder, how Worthy and Robbs arrived and surrounded them in separate cars, and how Arrington walked up with a handgun, shot Balance until he fell, then discharged the handgun at the defendant while the defendant ran away. The defendant also truthfully identified Arrington, Worthy, and Robbs via photographic lineup to police.
- d. On or about November 14, 2014, a Grand Jury of the United States District Court for the Western District of New York was conducting an investigation to determine whether violations of Title 18, United States Code, Sections 922(g)(1), 924(c), and 1959(a) had been committed during the shooting and murder of Quincy Balance and the attempted murder of the defendant on or about August 30, 2012, in the City of Buffalo, New York. It was material to said investigation to identify the person who had possessed, used, and discharged a firearm during the murder of Balance and attempted murder of the defendant, as well as to identify the persons who caused the commission of and conspired to commit the aforementioned violations of federal law. *Confirms the Date*
- e. The defendant, while appearing as a witness under oath at a proceeding before the Grand Jury, falsely recanted his identification of Arrington as the person who killed Balance and shot at the defendant. The defendant testified that he was mistaken about Arrington being the shooter, when he knew that he had observed Arrington as the shooter. Among other reasons for lying to the Grand Jury, the defendant was afraid of retribution from Arrington and his associates and for being labeled as a "snitch" if Arrington were indicted based on the defendant's testimony. The defendant was also upset at not receiving any sentencing benefit in his Erie County firearm conviction for cooperating with the federal investigation.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
) Case No. 1:15-CR-00033-3
) (RJA) (HBS)
 Plaintiff,)
)
 vs.) September 14, 2022
) 12:34 p.m.
 RODERICK ARRINGTON,)
)
 Defendant.)

TRANSCRIPT OF ORAL ARGUMENT AFTER HEARING
BEFORE THE HONORABLE RICHARD J. ARCARA
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: TRINI E. ROSS, ESQ.
UNITED STATES ATTORNEY
BY: JEREMIAH LENIHAN, ESQ.
ASSISTANT UNITED STATES ATTORNEY
138 Delaware Avenue
Buffalo, NY 14202

U.S. DEPARTMENT OF JUSTICE
ORGANIZED CRIME SECTION
BY: JULIE ANN FINOCCHIARO, ESQ.
1301 New York Avenue, NW
Suite 7th Floor
Washington, DC 20530

For the Defendant: RODERICK ARRINGTON, PRO SE

Stand-by counsel: MARK A. FOTI, ESQ.
16 W. Main Street, Suite 100
Rochester, NY 14614

Court Reporter: MEGAN E. PELKA, RPR
Robert H. Jackson US Courthouse
2 Niagara Square
Buffalo, NY 14202
(716) 364-6449

12:34PM
12:34PM
12:34PM
12:34PM

12:34PM 1 THE DEFENDANT: Your Honor, the camera speaks for
12:34PM 2 itself, Your Honor. When she got escorted out of here without
12:35PM 3 your permission, as a testifying witness that was -- you gave
12:35PM 4 her ten minutes to refresh her recollection. The government
12:35PM 5 had her removed to an unsecure location.

12:35PM 6 And as you can see, in Exhibit 3, that when she come out
12:35PM 7 and she being escorted down the hall, you see Special Agent
12:35PM 8 Colunga come from the window, goes over to this blind spot and
12:35PM 9 was over there with her talking to her for the whole 20-
12:35PM 10 something minutes off camera.

12:35PM 11 If you do the read back on her testimony, before she left
12:35PM 12 out of here, Your Honor, she was hostile with the government.
12:35PM 13 She was refusing to identify me. She was -- she didn't
12:35PM 14 identify me. And the whole time she's over there talking to
12:35PM 15 Special Agent Colunga.

12:36PM 16 She comes in and says -- blurting out stuff, saying stuff,
12:36PM 17 you know; that I wasn't even questioning her about, and
12:36PM 18 changes her story, and starts screaming out that I know what I
12:36PM 19 did. You know what you did. And I'm like, what are you
12:36PM 20 talking about? What's going on? I'm not even asking you a
12:36PM 21 question. She start blurting out, you killed him, you know
12:36PM 22 what you did.

12:36PM 23 And I'm moving for a mistrial with prejudice, Your Honor,
12:36PM 24 because whatever Colunga told her to come here and say, she
12:36PM 25 said it, and the jury's heard that, and you can never take

12:36PM 1 that from the jury's minds. And it's not fair. It's unfair.
12:36PM 2 And they took it upon they self when they seen a situation
12:36PM 3 going left, and it's going out of -- whatever they thought
12:36PM 4 that she was going to testify to.

12:36PM 5 But as I'm here going to trial, Your Honor, saying I'm
12:36PM 6 innocent, I didn't commit this crime, and for the testimony to
12:37PM 7 go totally different for the government, and she's not
12:37PM 8 cooperating with the government, and she's saying that she
12:37PM 9 never seen me, and she never seen my face, and then come in
12:37PM 10 here and changes her story, Your Honor, because a special
12:37PM 11 agent that's been constantly involved in this case, raiding my
12:37PM 12 cell, seizing my materials, my materials coming up missing,
12:37PM 13 he's going by my alibi witness's house trying to get them to
12:37PM 14 tell them what she going to testify to, he's constantly,
12:37PM 15 constantly, reappearing in this case, Your Honor, doing foul
12:37PM 16 things.

12:37PM 17 And when that witness was on the bench during her
12:37PM 18 examination testimony, the government calls her out so the
12:37PM 19 agents can have they way with her. And it's not fair. And
12:37PM 20 you can never erase what she said out of the jury's minds,
12:38PM 21 Your Honor. During trial, I'm sitting here during trial.
12:38PM 22 This is a witness that was with the deceased or the person
12:38PM 23 that got killed, Your Honor. She never identified me, Your
12:38PM 24 Honor. And the government seen it wasn't going their way, and
12:38PM 25 they took this recess, and without you being on the bench,

1 they took it upon they selves to get her outside to change her
2 story and I'm moving this court for a mistrial with prejudice,
3 Your Honor.

4 THE COURT: Mr. Lenihan?

5 MR. LENIHAN: A couple points, Your Honor. As the
6 testimony bore out from Court Security Officer Scott, the
7 government didn't make the determination to ask
8 Ms. Kazukiewicz to leave the witness stand. It was made in
9 the moment, for her security, to calm down a situation that
10 occurred in this courtroom. And the video bears that out.

11 The video also corroborates Special Agent Colunga's
12 testimony that he was with her but he testified credibly that
13 he never told her to say anything, to identify the defendant;
14 that all he told to her was to calm down a little bit and just
15 tell the truth.

16 The witness herself corroborates all of this. The
17 defendant asked the witness, did the government tell you
18 anything? And her answer was, why would they tell me? They
19 didn't tell me anything. Her testimony was that no one from
20 the government told her what to say and to identify the
21 defendant. The defendant choose to cross-examine her, and she
22 testified as to how she testified.

23 There's -- we never asked for an in-court identification.
24 We had briefed this issue. The Court had precluded the in-
25 court identification at the first trial due to that Facebook

12:39PM 1 photograph that was shown to her prior to her Grand Jury
12:39PM 2 testimony.

12:39PM 3 So, when we made our representation over the weekend as to
12:40PM 4 seeking her identification evidence, it was purely for the
12:40PM 5 photo arrays; the two photo arrays where she said, on the one,
12:40PM 6 she'd have to see Mr. Arrington in person, and on the other,
12:40PM 7 she said she was 45 percent sure, but would have to see him in
12:40PM 8 person. And Mr. Arrington started asking her about what would
12:40PM 9 happen if she saw him in person, and the answer was something
12:40PM 10 that he really didn't like.

12:40PM 11 There's no evidence of misconduct whatsoever, pure
12:40PM 12 speculation, pure conspiracy theory. We'd ask the Court to
12:40PM 13 deny the defendant's application.

12:40PM 14 THE DEFENDANT: Your Honor, can I say something?

12:40PM 15 THE COURT: Yes.

12:40PM 16 THE DEFENDANT: The video speak for itself, Your
12:40PM 17 Honor. Colunga didn't have no right to be telling her what
12:40PM 18 to -- testimony or giving her advice of what her testimony
12:40PM 19 should say. He's an experienced special agent. He know the
12:40PM 20 rules of this courtroom and what he should and should not do.

12:40PM 21 Your Honor, he specifically came in here -- first and
12:41PM 22 foremost, AUSA Lenihan lied to you when you asked him about
12:41PM 23 her being secured in this room. He said nobody had access to
12:41PM 24 her. She was in the room the whole time. Once he found out
12:41PM 25 the cameras was coming about, his story totally changed, Your

12:41PM 1 Honor.

12:41PM 2 MR. LENIHAN: Judge, I mean, on that point, I have to
12:41PM 3 rely on --

12:41PM 4 THE DEFENDANT: I was still -- finished. I wasn't
12:41PM 5 finished talking. I gave you your piece, give me my piece
12:41PM 6 please.

12:41PM 7 When the Judge asked you, you told the Judge that she was
12:41PM 8 in a secure place. Nobody had access to her. Nobody went in
12:41PM 9 the room with her. Once you found out that cameras was
12:41PM 10 involved and the Judge was getting his camera in, your
12:41PM 11 testimony changed twice. First you said the female special
12:41PM 12 agent and then oh, one more.

12:41PM 13 Colunga had direct contact with this lady in the corner
12:41PM 14 off the camera in a blind spot sitting there with her for 20
12:42PM 15 minutes talking to her, giving her advice on what to testify
12:42PM 16 to. We couldn't hear what they were saying, but what -- her
12:42PM 17 actions when she came back in here tells the story of what
12:42PM 18 took place. And it was definitely misconduct being committed,
12:42PM 19 Your Honor. So, I'm asking this Court --

12:42PM 20 MR. LENIHAN: Judge, on that point, I wasn't present.
12:42PM 21 I have to rely on what's told to me. I was relying on the
12:42PM 22 fact that there was no contact. It was a fact-finding mission
12:42PM 23 this morning. As we developed more facts and we talked to
12:42PM 24 more people, we learned that Special Agent Colunga did, in
12:42PM 25 fact, escort her to the bathroom; and then, that Special Agent

1 Colunga sat down on the bench. When I made that
2 representation, I didn't know that. It was evolving this
3 morning. I'm doing the best I can to give the Court the
4 information as to what I knew at the time.

5 THE DEFENDANT: Your Honor, he knew it was special --

6 THE COURT: All right. No, no. No more talking.
7 I've heard enough. I've seen the evidence. I'll render a
8 decision tomorrow morning at 10 o'clock. All right. We'll
9 recess for the day.

10 (Proceedings concluded at 12:43 p.m.)
11
12
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21
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23
24
25

* * * * *

I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Official Court Reporter

Roderick Arreola, PO SE
PO Box 496
Lockport, NY 14095

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BUFFALO

15-CR-33

Clerk of the U.S. District Court
For the Hon. Chief Judge Wolford
2 Niagara Square
Buffalo, NY 14202